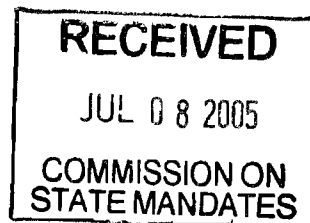


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July 8, 2005

Paula Higashi, Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, CA. 95814

Dear Ms. Higashi:

School Innovations and Advocacy (SI&A) submits the following comments regarding the reconsideration of School Accountability Report Cards (SARC) I, scheduled for rehearing on July 28, 2005. We appreciate the Commission's action to extend the comment period, but note that at this point it is difficult to determine which issues to raise since no new draft staff analysis is provided for the rehearing. We assume that the prior final staff analysis does not fully represent the current views of Commission staff given the significant differences between that analysis (Final Staff Analysis, Item 7) and the testimony by Commission staff and the Department of Finance (DOF) at the May 26, 2005 hearing. These comments reflect our best understanding of the positions asserted by Commission staff and the DOF, and we will provide additional comments in a timely manner if we fail to anticipate some of the arguments in the "revised" final staff analysis.

As a preliminary matter, based on the testimony by Commission staff at the May 26, 2005 hearing, it is our understanding that staff is no longer arguing that district claimants must prove that legislative amendments to the SARC require districts to expend local property tax revenues. Instead, we believe staff is asserting that because Proposition 98 created both a funding guarantee and the original SARC requirement, all Proposition 98 funds received by districts must be counted as offsets to the costs related to additional SARC requirements enacted by the Legislature. (See Reporter's Transcript of Proceedings, p. 168:14-16, 169:1-3; see also 133:14-19, 134:15-25, 150:18-21, 151:11-17.)<sup>1</sup> The DOF also chose not to support the local property tax argument. (Transcript, 147:15-17, 165:7-9.) So we assume that the local property tax argument found on page 17 of the prior Final Staff Analysis will be abandoned and that we need not comment on this issue.

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<sup>1</sup> Commission staff kindly provided a copy of the Reporter's Transcript of Proceedings for the May 26, 2005 public hearing. We have attached a copy of the relevant sections of the Transcript and cite to it for convenience.

It appears that Commission staff and the DOF assert three distinct arguments for denial of reimbursement for SARC I. First, citing Government Code Section 17556(f), the DOF essentially argues that the original SARC was created by a statewide ballot measure and the language of the ballot measure specified minimum requirements but did not prohibit additional requirements, therefore no additional SARC requirements added by legislation can be reimbursable. (Transcript 145:19-147:9, 149:4-10, 165:2-9.) Second, Commission staff argues that Proposition 98 funds must be used to offset costs related to SARC amendments. (Transcript 168:14-16, 169:1-3.) Finally, staff argues that the legislative amendments to the SARC require only a minimal reallocation of resources that are insufficient to trigger a duty to reimburse by the State. (Final Staff Analysis, p. 16; Transcript 132:21-133:5.)

With regard to the DOF argument, there is no dispute regarding the original SARC requirements contained in Proposition 98 – pursuant to Government Code Section 17556(f) they are not reimbursable. The SARC I test claim is solely about the additional SARC requirements mandated by legislation – these legislative mandates are reimbursable as properly determined by the Commission on April 23, 1998. There is simply no legal authority for the proposition that the State has no duty to reimburse costs for subsequent legislative mandates related to a requirement initially established by ballot measure. The fact that the language of Proposition 98 allows for both the state and local districts to add items to the SARC is irrelevant (it seems most likely that the “not limited to” language cited by DOF (Transcript, 149:4-10) simply reflects the view that local districts should not be prohibited from adding helpful information to their SARCs). Government Code Section 17556(f) provides that “**duties that were expressly included in a ballot measure** approved by the voters in a statewide or local election” are not reimbursable. (Emphasis added) The additional SARC requirements mandated by the Legislature were not “expressly included” in Proposition 98 and therefore do not fall into the exception to reimbursement contained in Section 17556(f).<sup>2</sup>

Similarly, there is no legal authority for the argument by Commission staff that Proposition 98 funds must be used as an offset to mandated costs from subsequent legislative amendments to the SARC. Staff cites *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4<sup>th</sup> 727, as support for this proposition. But that case deals only with “program funds” provided by the state that can be used to offset costs related to reimbursement claims for that specific program. (*Id.* at 746-47.) Proposition 98 contains a number of formulas (based on different economic situations) that create a minimum funding guarantee for K-14 education – Proposition 98 does not make an appropriation and cannot be described as program funding. Therefore, *Department of Finance v. Commission on State Mandates* provides no support for staff’s argument that all funds that count towards satisfying the Proposition 98 minimum guarantee<sup>3</sup> also count

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<sup>2</sup> An additional point is warranted here. AB 2855, the statute that directs the Commission to reconsider the SARC I decision, specifies reconsideration “in light of federal statutes enacted and state court decisions rendered” since the legislative amendments were enacted. The DOF argument is not based on federal statutes or recent state court decisions, but on a new interpretation of Section 17556(f). Therefore the DOF argument is inconsistent with the legislative direction for reconsideration.

<sup>3</sup> Since local property tax revenues count towards satisfaction of the minimum funding guarantee, this new staff theory is totally inconsistent with the arguments and cases cited on pages 17-18 of the Final Staff

as program funding for the SARC. Staff's assertion of a "unique relationship" between Proposition 98 and the SARC (See Transcript, 133:14-19) that require all Proposition 98 funds be used as an offset is an interesting opinion, but one that has no basis in case law or any constitutional or statutory language.

Finally, Commission staff cites *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4<sup>th</sup> 1176, as support for the argument that the legislative amendments to the SARC are *de minimis* and do not mandate any increased costs, therefore no reimbursement is required.<sup>4</sup> (Final Staff Analysis, p. 16.) However, staff provides no analysis of the costs of the various legislative mandates related to the SARC. Indeed, the Commission's prior ruling on these mandates suggest the cost is not minimal. The Commission adopted a statewide cost estimate for SARC I of \$1.7 million. It is our understanding that in order of total cost SARC I was 13<sup>th</sup> out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of these 30 claims can be considered *de minimis* and not reimbursable? Staff should clearly state a standard by which SARC I costs can be measured to determine whether or not they are *de minimis*. Is there a dollar amount threshold? Is the standard based on the percentage of the legislative amendments costs compared to the total SARC costs? Is each legislative amendment assessed individually, or should the Commission look at the aggregate costs of all legislative amendments to determine whether costs are *de minimis*? Without such an analysis the argument that the legislative mandates related to SARC are *de minimis* is simply a stated conclusion rather than a finding based on evidence.

In conclusion, we believe that the Commission properly ruled on the SARC I test claim at the hearing on April 23, 1998, and none of the arguments advanced by Commission staff or the DOF support denial of the test claim on reconsideration. We respectfully request that the Commission reaffirm its prior ruling on the SARC I test claim.

Sincerely,

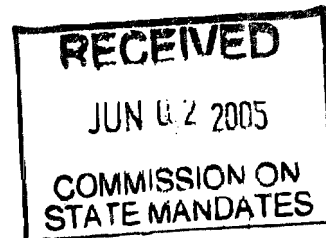


Abe Hajela  
Chief Counsel

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Analysis. As noted above, we assume staff has abandoned the local property tax theory and therefore we do not distinguish the *County of Sonoma* and *County of Fresno* cases cited in the Final Staff Analysis.

<sup>4</sup> DOF rejects the *de minimis* argument – "it's our belief that it wasn't a cost issue, *de minimis* consideration type of analysis here that had the Legislature ask the Commission to reconsider this decision," and "I don't see *de minimis* discussions or property-tax discussions as really having much relevance to the issue here before the Commission." (Transcript, 167:20-23, 165:7-9.)



--oOo--

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

--oOo--

**TIME: 9:31 a.m.**

**DATE: Thursday, May 26, 2005**

**PLACE: State Capitol, Room 126  
Sacramento, California**

--oOo--

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

--oOo--

**ORIGINAL**

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**Daniel P. Feldhaus**

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1 analyzed in this analysis, so I wouldn't have to change  
2 any of the testimony provided.

3 CHAIR SHEEHAN: All right, so any questions for  
4 staff on that?

5 MEMBER BOEL: I would like to move that we adopt the  
6 proposed Statement of Decision.

7 MEMBER SMITH: Second.

8 CHAIR SHEEHAN: We have a motion and a second on the  
9 proposed Statement of Decision.

10 All those in favor, signify by saying "aye."

11 *(A chorus of "ayes" was heard.)*

12 CHAIR SHEEHAN: Any opposed?

13 *(No audible response was heard.)*

14 CHAIR SHEEHAN: All right, that is adopted.

15 MR. KAYE: Thank you.

16 CHAIR SHEEHAN: We've got to go back to 7, and then  
17 do Butte.

18 MS. HIGASHI: We should call 7 and 8 now.

19 CHAIR SHEEHAN: All right, do you want to do that  
20 now; and then we'll recess at, like, 12:30?

21 MS. HIGASHI: Yes.

22 CHAIR SHEEHAN: All right, so let's go back to  
23 Item 7.

24 Are you ready for this?

25 MS. HIGASHI: We're now at Item 7. And this item

1 will be presented by Commission Counsel Katherine  
2 Tokarski.

3 MS. TOKARSKI: Good afternoon. *School*  
4 *Accountability Report Cards* was a test claim approved by  
5 the Commission at the April 23rd, 1998, hearing. AB 2855  
6 directs the Commission to reconsider this prior final  
7 decision. Statutes 1997, Chapter 912, was not named  
8 explicitly in AB 2855. Therefore, staff finds the  
9 Commission does not have authority to rehear that portion  
10 of the original decision at this time.

11 In enacting Proposition 98, the Classroom  
12 Instructional Improvement and Accountability Act, the  
13 voters provided public schools with state-funding  
14 guarantees by amending the California Constitution. As  
15 part of this constitutional guarantee of funding, the  
16 voters also required schools to undergo an annual audit  
17 and to issue an annual school accountability report card.  
18 The test claim was filed on statutory amendments to the  
19 Prop. 98 requirements for the *School Accountability*  
20 *Report Card*.

21 Staff finds that requiring some new data elements  
22 and a new method for publicizing and distributing the  
23 existing school accountability report card, the State has  
24 not shifted from itself to districts the burdens of state  
25 government, when the directive can be complied with by a

1 minimal reallocation of resources as described by the  
2 Court in the 2003 decision, County of Los Angeles vs.  
3 Commission on State Mandates. Based on this controlling  
4 case law, staff finds no new program or higher level of  
5 service was imposed..

6 As a second and independent ground for denying  
7 reimbursement, staff finds that there are also no costs  
8 mandated by the state.

9 In Department of Finance vs. Commission on State  
10 Mandates, the California Supreme Court found, regarding a  
11 school district mandates claim, that the availability of  
12 state program funds precludes a finding of a reimbursable  
13 state mandate.

14 Staff finds that there is a unique relationship  
15 between the voter-enacted *School Accountability Report*  
16 *Card* requirement and the Prop. 98 school funding  
17 guarantee. Therefore, the state funds received under  
18 Prop. 98 are program funds that can be used for  
19 completing the annual school accountability report card.

20 In December 2004, interested parties and state  
21 agencies were asked to file opening briefs on the issues  
22 under reconsideration. Until yesterday, the only written  
23 comments received were on the draft Staff Analysis.

24 Sweetwater Union High School District, one of the  
25 original claimants, stated complete disagreement with the

1 conclusions, arguing that the test claim legislation did  
2 impose a higher level of service on school districts.

3 Department of Finance filed comments supporting the  
4 Staff Analysis.

5 Yesterday afternoon, a late filing was received from  
6 the Education Management Group. And you should have that  
7 before you. This letter asserts that the staff's  
8 analysis on costs mandated by the state is based on a  
9 new legal theory, requiring schools to prove that  
10 reimbursable state-mandated costs are paid from a  
11 property tax source. The Education Management Group  
12 argues that would make it impossible for school districts  
13 to prove any past or future mandate claims due to an  
14 accounting burden that schools cannot meet.

15 Staff finds that this filing takes the property tax  
16 argument out of context. The Staff Analysis is on a test  
17 claim for *School Accountability Reports Cards* which, as  
18 previously stated, is uniquely tied to the Prop. 98  
19 funding guarantee.

20 Districts receive well over \$31 billion a year  
21 through Prop. 98. Therefore, staff finds that to receive  
22 reimbursement for this particular test claim, districts  
23 have the burden to prove that they are required to exceed  
24 Prop. 98 funding in order to provide annual school  
25 accountability report cards.



1           The argument that if staff's recommendation is  
2           adopted by the Commission, districts are going to be  
3           forced in future claims to prove that they used their  
4           Prop. 98 funds to offset all mandates is incorrect. As a  
5           quasi judicial body, each of the Commission's mandate  
6           decisions must be supported by constitutional, statutory  
7           and case law. But each decision is limited to the claim  
8           presented, and Commission decisions are not precedential.

9           That said, staff notes that this decision does not  
10          present a novel theory of law as stated in the late  
11          filing. This exact issue was presented and approved by  
12          the Commission over a year ago, at the March 2004 hearing  
13          on *School Accountability Report Cards II and III*.

14          Staff recommends the Commission adopt the Staff  
15          Analysis to deny the reconsidered portions of the  
16          original test claim decisions as stated in the conclusion  
17          beginning at page 22.

18          Will the parties and witnesses please state your  
19          names for the record?

20          MR. HAJELA: Abe Hajela, School Innovations and  
21          Advocacy.

22          MR. SOOKPRASERT: Jai Sookprasert with the  
23          California School Employees Association.

24          MR. MIYASHIRO: Robert Miyashiro with the Education  
25          Mandated Cost Network.

1 MR. McFADDEN: Brent McFadden on behalf of the  
2 Education Coalition and the Association of California  
3 School Administrators.

4 MR. HAMILTON: Richard Hamilton, on behalf of the  
5 California School Boards Association.

6 MS. THORNTON: Sandra Thornton on behalf of the  
7 California Teachers Association.

8 MR. DEL CASTILLO: Lenin Del Castillo with the  
9 Department of Finance.

10 MR. CERVINKA: Pete Cervinka, Department of Finance.

11 CHAIR SHEEHAN: I will ask you to go ahead and  
12 start.

13 I guess one thing that I would say is if most of the  
14 testimony is on this one issue. If someone could  
15 articulate it -- if you have new ideas, please bring up  
16 new substantive issues. But if you are simply supporting  
17 what someone else has said, you don't need to go through  
18 the legal analysis in detail for us.

19 MR. HAJELA: Thank you very much. Abe Hajela with  
20 School Innovations.

21 There are two issues here in the Staff Analysis that  
22 I want to address. One is this issue of, is it really a  
23 higher level of service? And that is, are the new things  
24 added to the *School Accountability Report Card* by  
25 subsequent legislation simply too minimal to be a higher

1 level of service? So that's one issue.

2 The second issue is the property-tax issue. So what  
3 is the requirement of a school district claimant to prove  
4 that they use local property tax revenues?

5 So let me take the second one first and make sure  
6 I understand staff's analysis because all I have to work  
7 on is what is in here. And it states the issue pretty  
8 broadly.

9 If I can direct you to page 18, there's a sentence  
10 here that says, *"School districts have not demonstrated*  
11 *that the state funds received through Article XVI,*  
12 *sections 8 and 8.5, or any other sources beyond property*  
13 *tax revenues"* -- so they're not limiting themselves to  
14 Prop. 98 -- *"are unavailable for the claimed additional*  
15 *costs of adding data elements to existing School*  
16 *Accountability Report Cards. In the absence of that*  
17 *showing, staff finds the test claim legislation does not*  
18 *impose costs mandated by the state."*

19 Now, I read that to say that you have to prove your  
20 spending local property-tax revenues before you can file  
21 or claim a reimbursement from the state. And it was my  
22 understanding that that's what was intended in this  
23 analysis. And that is what we are disputing. There is  
24 no way school districts can prove they use local  
25 property-tax revenues when they comply with specific

1 mandates, because those funds are commingled with other  
2 funds we receive through Prop. 98. We largely receive  
3 our Prop. 98 funding as revenue limits. And that  
4 commingles both property tax revenues, plus other funds  
5 received by the state. And school districts accounting  
6 procedures are largely regulated by the state and state  
7 agencies, and they don't require you to segregate out  
8 your funds that way. So that's the first issue.

9 Secondly, if this is only to apply to SARC -- so  
10 this argument is not made for any other program, it's  
11 only for SARC, and that's because the SARC was initially  
12 created by Prop. 98 -- the case they cite is easily  
13 distinguishable. The case they cite is relating to a  
14 program that is funded by the Legislature. So there's a  
15 specific appropriation for that program. In that case,  
16 you could say there needs to be an offset.

17 There is no specific appropriation for SARCs, and  
18 there's no -- and SARCs have been in the law since  
19 Prop. 98. And so there's nothing new that's happened  
20 for the Commission to believe that there's a new  
21 interpretation of law necessary here.

22 So if that's not clear what I'm saying is, if there  
23 is a funding stream for something, like there was in the  
24 case cited by staff, that needs to be used as an offset.  
25 There's no funding stream for SARC.

1           So that's the first issue. So it's impossible to  
2       comply.

3           And secondly, if you're to take the property-tax  
4       issue broadly, we've got 20 years of history, saying that  
5       that's not the way we analyze the law for school  
6       districts. And if that was the case, school districts  
7       would never be able to show that they ought to be  
8       reimbursed. Okay, and obviously Proposition 4 put school  
9       districts into the Constitution. All right, that's that  
10      issue.

11          On the second issue, of whether there's really a  
12      higher level of service, as I read the Staff Analysis,  
13      what they've done is, they've looked at each piece of  
14      legislation since the original SARC requirements in  
15      Prop. 98, and said each of them by themselves are too  
16      minimal to justify a reimbursement.

17          The problem with that is, you need some sort of  
18      standard. I mean, do we mean minimal in terms of dollar  
19      amounts? Do we mean minimal, in terms of percentage of  
20      the overall activity? And is it appropriate to take each  
21      one individually, or should you look at them in the  
22      aggregate?

23          So, for example, let's say the initial SARC -- and  
24      I'm making this up -- the initial SARC created by the  
25      Constitution was three pages long, and then let's say you

1 have twenty pieces of legislation, each adding a  
2 paragraph. It doesn't seem to me you need a standard for  
3 what is minimal. Because if you take those 20 paragraphs  
4 together, they triple the initial SARC. So there just  
5 needs to be a standard here. It ought to either be a  
6 dollar-amount standard, or it ought to be a percentage of  
7 the program. And then I think the Commission needs to  
8 give us guidance on whether that's in the aggregate,  
9 because the SARC could be amended 20 more times in the  
10 next ten years.

11 So is it in the aggregate, or do you just take each  
12 one individually and analyze them? Because I believe  
13 that the SARC has become considerably longer, has a lot  
14 more data elements in the aggregate since the initial  
15 Prop. 98 SARC.

16 So those are my opening comments. Thanks.

17 CHAIR SHEEHAN: Okay.

18 MR. SOOKPRASERT: Jai Sookprasert with the  
19 California School Employees Association.

20 I would associate myself with the comments that Abe  
21 has made, and also, just to add a little bit more  
22 information.

23 In my years as the Assembly Appropriations Committee  
24 consultant, looking at all legislation that came through  
25 our desk, to argue that a school district must break it

1 down on the property tax cost, and then to make the  
2 argument that this is a minimal change, seems to go too  
3 far in trying to address this issue. It undermines just  
4 a lot of activities that is done normally by the  
5 Department of Finance or by the Appropriations Committee  
6 in trying to make the determination whether this new  
7 piece of legislation has had an impact or not. You're  
8 opening the door that is just so wide, that you would  
9 deny either essentially all legislation, or all  
10 legislation that you think, "Well, clearly, these have  
11 been funded in some level or manner, therefore, they  
12 should be passed." And at some point, though, as Abe had  
13 indicated -- I mean, metaphorically, at some point the  
14 straw will break the camel's back. I mean, you can think  
15 the additional straw is only an additional line on the  
16 SARC, but at some point, those will add up and have an  
17 incredible burden on the school districts that will harm  
18 them.

19 Thank you.

20 CHAIR SHEEHAN: Okay.

21 MR. MIYASHIRO: Thank you, Madam Chair and Members  
22 of the Commission. Again, Robert Miyashiro with the  
23 Education Mandated Cost Network.

24 The two broad points that the staff are using to  
25 recommend a reversal of the Commission's prior finding

1 rests with the argument on the property tax and on the  
2 de minimis nature of the claim. I think others will  
3 speak, again, more broadly on the property tax side, so I  
4 will speak to the nature of the de minimis nature of the  
5 claim.

6 Current law specifies that local agencies must have  
7 a claim of a thousand dollars or more to put forth before  
8 this Commission. It used to be \$200. It was raised to  
9 \$1,000. So the Legislature has established a minimum  
10 threshold for consideration of a claim.

11 Staff has not put forth a dollar amount that  
12 establishes a minimum amount. They have suggested that  
13 the activities are de minimis; they have suggested that  
14 it's a minor reallocation of resources. They have  
15 indicated in the analysis, that incidental duties do not  
16 require reimbursement. That is not correct, according to  
17 the law, as far as a claim can be made.

18 The law specifies a thousand-dollar minimum claim.

19 The Commission itself adopted a statewide cost  
20 estimate for *School Accountability Reports Cards* of  
21 \$1.7 million. That is not a minimal amount of a claim.  
22 That is the thirteenth-largest claim of the 30 for which  
23 there were statewide cost estimates made by this  
24 Commission for 2002-03. So we would say the fact of  
25 the matter does not bear out a de minimis cost to local



1 agencies. Again, the thirteenth largest of statewide  
2 cost estimates adopted by this Commission.

3 Staff references Proposition 98 and it's detailing  
4 the general requirements of the SARC, linking the two and  
5 suggesting that 30-plus billion dollars provided by  
6 Proposition 98, in essence, funds the activities of  
7 local agencies to provide the SARC. To be clear,  
8 Proposition 98 does not appropriate money for any  
9 program. Proposition 98 establishes a minimum funding  
10 level for which the Legislature then makes appropriations  
11 to specific programs, in satisfaction of that minimum  
12 requirement. So it is not sufficient to reference SARC  
13 in the Proposition 98 guarantee, and then conclude that  
14 the minimum requirements, therefore, fund a particular  
15 program. An appropriation must be made to fund the  
16 program.

17 And your staff, in other issues before you today,  
18 have made it clear that the Government Code, when it  
19 assesses whether there are offsetting revenues, is that  
20 the amount provided be specifically intended for the  
21 program and that it be sufficient. We would argue that  
22 the language of Proposition 98 is not specifically  
23 intended for the program. It fails on that first test.

24 So on this entire issue of adequacy and de minimis,  
25 we think that the Staff Analysis has not overcome the

1 original findings of this Commission; that there is, in  
2 fact, a reimbursable mandate. And, in fact, that amount  
3 is not de minimis, and should, in fact, be provided. We  
4 would strongly urge your rejection of the Staff Analysis  
5 and let your 1998 decision stand.

6 CHAIR SHEEHAN: Okay.

7 MR. McFADDEN: Madam Chair and Members, Brett  
8 McFadden on behalf of the Association of California  
9 School Administrators, as well as the Education  
10 Coalition. My colleague from the labor side of the  
11 Education Coalition will be up here shortly.

12 I'd like to associate myself and the Coalition with  
13 the remarks made by the previous three speakers. They  
14 spoke eloquently to our core arguments on this issue.

15 Thank you.

16 CHAIR SHEEHAN: Thanks.

17 MS. THORNTON: Sandra Thornton.

18 I agree with all the comments that have been made.

19 And speaking on behalf of the California Teachers  
20 Association and as a classroom teacher, I would urge this  
21 Commission to oppose any test claim recommendation that  
22 would affect the funding source or perpetuate the  
23 underfunding of funds for the California schools.

24 CHAIR SHEEHAN: Thank you.

25 MR. HAMILTON: Richard Hamilton on behalf of the

1 California School Boards Association.

2 And I also would like to concur with the comments  
3 that you've already heard, and endorse them before you.

4 I would also point out that the Staff Analysis, in  
5 addition to not considering the offset language with  
6 respect to specifically-intended funding, as has been  
7 referred to earlier, does not address subpart (f) of  
8 Government Code section 17556, which speaks of imposing  
9 duties that are expressly included in a ballot measure.

10 CHAIR SHEEHAN: Thank you.

11 Anyone else, before we go to Finance?

12 Okay, go ahead.

13 MR. CERVINKA: Thank you, Madam Chair.

14 Pete Cervinka, Department of Finance.

15 I actually don't particularly believe that we would  
16 agree with the interpretation of the Staff Analysis  
17 that's been presented here today by the speakers before  
18 me.

19 In fact, I think our interpretation -- and we happen  
20 to agree with the Staff Analysis here -- is simply that  
21 Government Code section 17556(f) specifically states that  
22 ballot measures adopted by the voters on a statewide  
23 initiative do not impose reimbursable mandates for duties  
24 expressly included in the ballot measures.

25 As part of the ballot measure for Prop. 98,

1 Education section 35256 was added to the code. And  
2 specifically, again, says that the report card shall  
3 include, but is not limited to, the conditions listed  
4 in Ed. Code section 33126, which was also added by  
5 Proposition 98.

6 In addition, 35256 states that:

7 *"The governing board of each school*  
8 *district shall compare the content of the*  
9 *school district's SARC to the model SARC*  
10 *adopted by the State Board of Education."*

11 I think your staff has reimbursed the appropriate  
12 conclusion here, that the electorate clearly recognize  
13 that the precise models of the model report card are  
14 subject to change, and that the Districts are required  
15 to make modifications as necessary, with allowances for  
16 unique local circumstances.

17 As staff again correctly noted, Prop. 98 clearly  
18 states that, "No provision of the Act may be changed,  
19 except to further its purposes."

20 Each staff issue in this present test claim also  
21 affirmatively states that, "The Legislature finds and  
22 declares that this Act furthers the purposes of the  
23 Classroom Instructional Improvement and Accountability  
24 Act."

25 And I think, simply by specifying that the SARC is

1 not limited to the provisions originally set out in the  
2 Education Code, and by requiring districts to  
3 periodically update their SARCs, the electorate recognize  
4 that the precise details of the model report card are  
5 subject to change and districts are required to comply  
6 with those changes.

7 So this is a statewide ballot measure. It can't be  
8 found reimbursable. And I think our analysis needs to  
9 stop there. This is very cut and dried.

10 CHAIR SHEEHAN: Do you have any comments on the  
11 other concern raised by the other witnesses?

12 MR. CERVINKA: Honestly, we hadn't thought about it  
13 a whole lot because our analysis really didn't go further  
14 than this.

15 We appreciate the concern. I think the Commission  
16 has a long-standing position that local funds cannot be  
17 required to be used to offset state-mandated local costs.  
18 However, again, your staff has pointed out that the  
19 language in this particular claim is limited simply to  
20 this particular issue because it was enacted as part of  
21 Prop. 98. But I'm not going to offer an opinion as to  
22 whether that conclusion is right or wrong. We just  
23 didn't go there.

24 CHAIR SHEEHAN: You didn't? Okay.

25 MEMBER SMITH: Madam Chair, may I ask a question?

1 CHAIR SHEEHAN: Yes.

2 MEMBER SMITH: Just to understand that correctly,  
3 you have no opinion on the higher-level-of-service  
4 argument that was made earlier?

5 CHAIR SHEEHAN: No, he does have an opinion on that.

6 MR. CERVINKA: That's exactly what I do have an  
7 opinion on. This is a voter-enacted statute and cannot  
8 be found to be reimbursable, and that's where it stops.

9 CHAIR SHEEHAN: He has an opinion on that. He  
10 doesn't have an opinion on the property tax issue.

11 MR. HAJELA: May I comment on that?

12 CHAIR SHEEHAN: On whether they have an opinion?  
13 Sure.

14 MR. HAJELA: No. I'm sorry, I need to know which  
15 target we're shooting at, because there's three different  
16 ones. If it's a higher --

17 CHAIR SHEEHAN: Well, the issues that you raised  
18 were the higher level of service and the property-tax  
19 issue.

20 MR. HAJELA: Correct. But Finance has just made an  
21 argument that no matter what you add by legislation to  
22 the SARC, it wouldn't be reimbursable.

23 MR. CERVINKA: Not by legislation, but by  
24 voter-enacted statute. And that's clear in the  
25 Constitution.

1           MR. HAJELA: But none of us are claiming the  
2 voter-enacted part is reimbursable. Nobody is making  
3 that claim.

4           MR. CERVINKA: I would argue that the Commission  
5 correctly concluded that because the proposition said,  
6 "including, but not limited to, the following" and  
7 required periodic updates to reflect changes made in that  
8 legislation," they clearly envision that there would be  
9 changes. And that precludes any finding of reimbursable  
10 mandate here.

11          MR. HAJELA: I think that's my point. Staff is  
12 saying the changes are de minimis, so don't worry about  
13 it too much, it's not a higher level of service.

14           I think what the gentleman here is arguing, is any  
15 changes in the future were contemplated in Prop. 98,  
16 therefore, any of them are okay. And I just want to be  
17 clear which are we responding to.

18          CHAIR SHEEHAN: You disagree with that?

19          MR. HAJELA: Yes, I disagree with both.

20          CHAIR SHEEHAN: You were responding to the Staff  
21 Analysis.

22          MR. HAJELA: Okay, thank you.

23          CHAIR SHEEHAN: All right, did that answer your  
24 question?

25          MEMBER SMITH: That's fine, for now.

1 CHAIR SHEEHAN: Okay. Katherine, do you want to  
2 respond? And can we address the property-tax issue  
3 first?

4 I have to say, this Commission member did not feel  
5 that was the justification for the final -- the  
6 recommendation from the staff. As you know, I did not  
7 see that in here, I didn't read it in here. I was  
8 surprised by the letter that I received this morning. So  
9 that that's why I am grateful that Katherine will address  
10 this issue.

11 MS. TOKARSKI: Again, there is a finding in multiple  
12 cases that the appropriate focus of mandate reimbursement  
13 is the expenditure of property taxes, as opposed to state  
14 funds. Those cases in the letter were distinguished  
15 summarily, that they were based on city and county claims  
16 and not school district claims; and that school districts  
17 are distinct.

18 As far as I know, the Commission or the State  
19 Controller's Office, when paying claims, has never  
20 required the claimant to prove that the money came from  
21 their property-tax source. It was sufficient to prove  
22 that they didn't have funds available from another  
23 source.

24 And my point here was simply that I did not receive  
25 any initial briefing. And in the comments that I did



1 receive on the draft Staff Analysis, nobody put out any  
2 evidence that this funding, \$31 billion from the state  
3 for Prop. 98, was unavailable.

4 And so my point -- which I understand how it was  
5 misconstrued -- and I do see that, because what I think  
6 people are doing is envisioning a future where you take  
7 out the words, "School Accountability Report Card," and  
8 put in any other mandate claim, to say that you have to  
9 prove that you used your property-tax pot of money versus  
10 your state pot of money.

11 All I was trying to point out here was that unless  
12 you had to go beyond the funds that you received under  
13 Prop. 98 to complete the additional requirements of the  
14 *School Accountability Report Card*, I couldn't find a cost  
15 mandated by the state using the analysis in the  
16 Department of Finance, also known as the Kern School  
17 District case. So that's to start with.

18 I don't believe you will ever see an analysis that  
19 starts using this sentence, and substituting in the  
20 words, "Put your test claim here."

21 In this case, my point was, you have "X" number of  
22 billions of dollars available to local school districts  
23 to meet these fairly minimal requirements of adding some  
24 things to SARC. And I understand that that's another  
25 dispute. But no evidence was put into the record that

1       they met their costs mandated by the state requirement.  
2       So that's where I start with the property-tax issue.

3               As far as going back to the higher-level of service  
4       issue --

5               CHAIR SHEEHAN: Hold on. Do you have a question?

6               MEMBER LUJANO: So if I'm hearing right, you're  
7       saying that the school districts don't have to prove that  
8       local property tax received were used to comply with the  
9       state mandates program?

10              MS. TOKARSKI: They have to prove that they have to  
11       go beyond their state funds in this case --

12              MEMBER LUJANO: No, but I'm being specific with the  
13       local property tax.

14              You're actually saying that the state funds are not  
15       available or committed to the mandates, but they don't  
16       have to prove that the local property tax revenues were  
17       used? Because what I'm hearing is, that's impossible  
18       because they're commingled.

19              MS. TOKARSKI: They're commingled.

20              MR. STARKEY: Let me interject. All we have at this  
21       point is this late filing of a letter which has some  
22       interesting language in it. In the third paragraph, it  
23       says, "From both the practical and legal standpoint, this  
24       new theory is ludicrous" -- which it's not a new theory  
25       and it's not ludicrous; it's been in the case law for

1 years -- "and almost impossible" -- note the words  
2 "almost impossible" -- "for districts to demonstrate."

3 The point is that in this case, the Prop. 98 funding  
4 is basically a quid pro quo. The voters said, "Hey,  
5 look, we want some accountability. And I'll tell you  
6 what: If we get the accountability, you're going to get  
7 the funding."

8 Okay, yes, it's not an appropriation; but it's clear  
9 in the intent of that proposition, this was a quid pro  
10 quo.

11 So you take a look at this proposition, and then you  
12 take a look at what is required here. And I'm blending  
13 the arguments about higher level of service. But we have  
14 case law that has said to us -- and, in fact, that case  
15 law comes from the courts of appeal and then from the  
16 California Supreme Court, that if there is a notion of a  
17 de minimis cost in state mandates law, and the notion is  
18 that if the Legislature imposes some activity, and that  
19 activity really does not cause the local agency to have  
20 this financial burden imposed upon them, which they  
21 cannot pay, and they are looking in all the cases at the  
22 imposition of taxes.

23 Article XIII B is about a balance, it's about a  
24 protection, where there were provisions to say, "You  
25 cannot -- we're going to put a limit on taxing and we're

1 going to put a limit on spending." And Article XIII B,  
2 Section 6, is a protection, so that the state does not  
3 impose this financial burden.

4 And so is there a de minimis element to mandates  
5 law? I think there is. I think it's in the court cases.

6 Is there a de minimis element to Prop. 98 and the  
7 *School Accountability Report Cards*? I think there is  
8 because the voters said, "Give us a report card. Tell us  
9 what you're doing." And they did leave it open to the  
10 Legislature. But the important thing was, they said the  
11 Legislature cannot, in their legislation, frustrate the  
12 intent of the voters.

13 And then the other thing is that this case is only  
14 saying, in this particular situation, with the activities  
15 we've identified, "these are de minimis and they don't  
16 impose a state mandate."

17 Could there be other things down the road where the  
18 camel's back is broken? Absolutely. And in fact -- and  
19 correct me, Ms. Tokarski, if I'm wrong -- I think in  
20 *SARC II*, we, in fact, identified activities that went, we  
21 thought, beyond the appeal and imposed the mandate that  
22 this is talking about.

23 CHAIR SHEEHAN: Imposed a higher level of service?

24 MR. STARKEY: A higher level of service.

25 And the other thing I want to say, is that the cases

1     that we're relying upon cannot be distinguished away  
2     because they're not school district cases. This is  
3     boilerplate, black-letter law, that every time the courts  
4     address this issue, they say, "What is Article XIII B  
5     about?" It is about this protection -- that you need  
6     this protection, in this tax-and-spend limitation  
7     situation. And they have never distinguished between  
8     school districts and local governments because the  
9     Constitution itself doesn't make that distinction.

10         So we have the case law, and that's what we're  
11     relying upon.

12         So my position is that very strongly, yes, I think  
13     there is a de minimis element. And you can't look to the  
14     statute and say, "Well, there used to be a \$200 minimum,  
15     now it's \$1,000 minimum." That's not the point, because  
16     the courts have told us that in certain situations, these  
17     incremental changes are just simply not going to be  
18     legally recognizable for purposes of imposing the state  
19     mandate.

20         And the policy rationale is that the counties or the  
21     local governments are not burdened within the meaning of  
22     a cost shift to the local governments.

23         And the reason I focus on cost shift is because that  
24     language is found in the Supreme Court case Ms. Tokarski  
25     cited. It is cited in our boilerplate, every time we put

1 one of these decisions out, that we are focusing on the  
2 imposition of those costs. So I just want to bring that  
3 clarification.

4 And I have to tell you, I take a little bit of  
5 umbrage where we have parties coming in at the last  
6 minute, filing letters with no support, no legal  
7 authority whatsoever, calling the staff work "ludicrous"  
8 and "based upon new theories," which have been in law for  
9 a long time.

10 And that's a personal comment from the Chief  
11 Counsel. But I really had a reaction to this letter, as  
12 you can tell.

13 CHAIR SHEEHAN: Thank you, Paul.

14 Yes, would you like to say something?

15 MR. HAJELA: Yes. May I respond to that?

16 I'm still trying to figure out, and there's a  
17 question asked by one of the Commissioners, which part of  
18 this staff is saying, "Sorry, you've misinterpreted what  
19 we've said," and which they aren't. And by the comments  
20 we just received here, it's, again, unclear to me. The  
21 cases that are cited on page 17 -- I mean, I'm not making  
22 this up, it's the first paragraph on page 17, and it  
23 talks about funding, in that schools receive most of  
24 their funding from state sources, which is true. And  
25 then they receive less from local property tax revenues.

1 And then they cite a series of cases to defend the  
2 proposition. It's the expenditure of tax revenues of  
3 a local government that is the appropriate focus of  
4 section 6.

5 What I had argued is, that is not about school  
6 districts. It's in the County of Sonoma case. And if  
7 you applied it to school districts, it would wipe out  
8 mandate reimbursements for school districts.

9 I'm not sure whether you are saying you didn't mean  
10 it or you did. And I would appreciate -- I agree that we  
11 came in late. And if we can somehow put this over to the  
12 next one and figure out exactly what it is that we agree  
13 and disagree on.

14 I felt like I agreed with a lot of things she was  
15 saying there a minute ago, which is, this has got nothing  
16 to do with property tax revenue; but now I'm not so sure  
17 again. So which cases are we relying on and what are we  
18 arguing about?

19 MR. STARKEY: Well, we're relying upon all the case  
20 law that has been cited in the paragraph on page 17, that  
21 you've talked about, combined with, if you read the rest  
22 of the section, the Department of Finance case. And the  
23 notion is that there is, in mandates law, the notion that  
24 property taxes matter.

25 And you want us to rule in this case for all future,

1       that that is not one of the issues that matters, that you  
2       have to consider property tax.

3               One, we didn't -- we're not relying upon that --  
4       we're not making a pronouncement for all future cases.  
5       The first part of this analysis is basically an analysis  
6       of how mandates law works. What is that balance in  
7       Article XIII B?

8               The case goes on to say then, we take a look -- and  
9       then in answering the comments from the Sweetwater Union,  
10      we then came back and provided further analysis to say,  
11      "Look, the most recent pronouncement of the California  
12      Supreme Court has done exactly the same thing: Taken a  
13      look at, are there funds available, and should this be a  
14      mandated situation? Has there been a cost shift?" And  
15      that court said, no, under those facts, we think that  
16      that court case is very, very analogous to this  
17      situation.

18              Hopefully, that's a little clearer.

19              CHAIR SHEEHAN: All right.

20              MR. HAJELA: I don't know why they even have to make  
21      the de minimis argument, given their read of the law;  
22      that's why I'm confused.

23              If you can't show that the \$31 billion under  
24      Prop. 98 doesn't cover SARC, if that's the issue, then  
25      you don't even have to get to the de minimis issue.



1 So I apologize that we came in late, but there is some  
2 confusion in here. And it would be nice to know which  
3 issues we're talking about.

4 CHAIR SHEEHAN: Did you want to add anything, Paul?

5 MR. STARKEY: No, I think that's fine.

6 CHAIR SHEEHAN: Any other comments?

7 Questions from the Members?

8 MEMBER SMITH: Madam Chair, just for clarification.

9 So as I understand the Staff Analysis, they're  
10 saying, number one, it's not a new program or higher  
11 level of service. Even if that weren't the case, they  
12 haven't shown that they've used anything other than local  
13 property-tax revenue -- or than Prop. 98 money.

14 So is the last part of this analysis really  
15 necessary on this case? I'm just trying to -- that seems  
16 to be the third issue. If you weren't to find the first  
17 two, then here's a third.

18 MS. TOKARSKI: Well, obviously the issue of whether  
19 there's a higher level of service remains in dispute.  
20 So staff counsel's recommendation is that the strongest  
21 analysis includes both the new program or  
22 higher-level-of-service analysis, and continues on to --  
23 which is typical in court decisions to say that even if  
24 you found this was the case -- and that is actually what  
25 the California Supreme Court did in the Department of

1     Finance case that we're relying on -- even if you find  
2     that this was the case, you still haven't shown us that  
3     you've met the burden of proof on costs mandated by the  
4     State.

5             In the Department of Finance, the issue was *School*  
6     *Site Councils*. And there were nine different types of  
7     school site councils at issue. And the court found that  
8     eight of them were not mandated.

9             But as to a ninth, there was a continuing level of  
10    dispute. And they went on to discuss why even if that  
11    was a mandated school site council, the notice and agenda  
12    costs resulting from that did not result in costs  
13    mandated by the state because the schools couldn't prove  
14    that the program funds that they had available for that  
15    school site council could not be used to adequately cover  
16    those expenses.

17            The court went on to say -- and I think this  
18    addresses some of the other arguments that were made --  
19    that it is conceivable, with regard to some programs,  
20    that increased compliance costs imposed by the state  
21    might become so great, or funded program grants might  
22    become so diminished, that funded program benefits would  
23    not cover the compliance costs or that expenditure of  
24    granted program funds on administrative costs might  
25    violate a spending limitation set out in applicable

1 regulations or statutes.

2 In those circumstances, a compulsory program  
3 participant likely would be able to establish the  
4 existence of a reimbursable state mandate under  
5 Article XIII B, Section 6.

6 But that certainly is not the situation faced by  
7 the claimants in this case. That's directly from the  
8 California Supreme Court decision in Kern. And I think  
9 that that addresses some of the issues that are raised:  
10 What if the state kept adding to this, and kept adding to  
11 this and kept adding to this, and created a greater  
12 burden? And I don't think, based on the statutes that  
13 are before you today, that that's been proved.

14 CHAIR SHEEHAN: It doesn't meet that test; right?

15 MEMBER SMITH: I hear that argument and I'm just  
16 troubled by it. It seems that the voters enacted to say  
17 whatever it is, ten provisions --

18 CHAIR SHEEHAN: Thirteen.

19 MEMBER SMITH: At some point, that could be, you  
20 know, 300.

21 But with the argument that's in the analysis, as  
22 long as it comes in chunks for each time, that it may  
23 never be considered a higher level of service. That's  
24 how I'm reading this, and that's why I'm a little  
25 troubled with the de minimis argument in the analysis,

1 unless I'm misunderstanding something.

2 MS. TOKARSKI: Again, those arguments were not made  
3 up wholesale by myself or other staff at the Commission.  
4 They're taken from recent court decisions that we think  
5 are applicable.

6 CHAIR SHEEHAN: That we're bound by.

7 MS. TOKARSKI: And we're bound by, I'm sorry.

8 MR. MIYASHIRO: If I might. I don't think the staff  
9 has sufficiently provided the linkage between a court  
10 finding and their assertion that this is, in fact,  
11 de minimis.

12 I mean, to cite a court finding and say, "Well, that  
13 applies here," would, to me, suggest that they have come  
14 to some conclusion about the costs incurred by the local  
15 agencies, and, in fact, then say, "Well, those amounts  
16 are de minimis."

17 And what I would suggest is that we already have a  
18 record of local costs incurred, and recognize cumulative  
19 costs exceed \$5 million on the costs of the *School*  
20 *Accountability Report Card*. When measured against other  
21 mandates that the State -- that this Commission has  
22 adopted statewide cost estimates on, this is in the top  
23 third.

24 So, again, the assertion about it being a minor,  
25 absorbable or incidental cost I don't think has been

1 borne out by any analytical work to draw that conclusion.  
2 And there's a body of evidence that suggests to the  
3 contrary, that it is not minimal. That among all of the  
4 mandates that, in fact, this Commission has recognized  
5 already, that it, again, is in the top third.

6 CHAIR SHEEHAN: But I think the issue in this claim  
7 is, these specific changes, staff has determined do not  
8 require. That does not say other changes to SARC -- you  
9 know, the previous cases have already proven that, in  
10 fact, there are these. The issue is, what is before us  
11 today, and are those in the test claims -- you know, do  
12 they provide a higher level of service? And so I think  
13 staff has made the determination through applicable law,  
14 understanding previous SARC, it is a reversible claim,  
15 and there is this higher level of service. And those --  
16 you know, that the locals, the school districts are  
17 entitled to that funding.

18 But the issue here, are these additions in the test  
19 claim -- you know, the new ones, do they meet that?

20 MR. HAJELA: On this one, I'm confused then. Are we  
21 saying that many of the legislative enactments that  
22 create a larger SARC are reimbursable, but just these  
23 ones aren't? Because that's not what I understood.

24 CHAIR SHEEHAN: No, what I'm saying is, we have to  
25 look at what the issue is before us today.

1 MR. HAJELA: Correct.

2 CHAIR SHEEHAN: Okay, that's my point.

3 MR. HAJELA: But what's before you today is all of  
4 them, except one; isn't that correct?

5 MS. TOKARSKI: No. Going back to the elements of  
6 the *School Accountability Report Card*, at page 13, the  
7 things that are underlined, are what the changes were  
8 made to 33126.

9 So everything that is not underlined was part of the  
10 original Prop. 98.

11 MR. HAJELA: No, no, no. I don't mean to be making  
12 the argument that anything from Prop. 98 is reimbursable.  
13 I'm saying, every piece of legislation since Prop. 98  
14 that added --

15 MS. TOKARSKI: But that's not all before us today.  
16 The reconsideration is limited to what the Legislature  
17 ordered us to --

18 MR. HAJELA: So as Mr. Miyashiro suggested, do we  
19 know -- this is my position on how much is the cost or  
20 how much of a percentage is it? Do we know of these  
21 ones, how much of the total cost that folks are claiming  
22 from reimbursement these ones are? Or do we know what  
23 percentage of the total program? Because before we know  
24 it's de minimis, you'd have to know that, it seems.

25 CHAIR SHEEHAN: Finance, did you want to say

1 something?

2 MR. CERVINKA: If I may. I guess I just profess a  
3 little bit of puzzlement by this whole discussion. You  
4 know, as I stated earlier, this is a voter-enacted  
5 statute. They clearly envisioned there would be changes  
6 here, and that precludes the finding of a mandate.  
7 I don't see de minimis discussions or property-tax  
8 discussions as really having much relevance to the issue  
9 here before the Commission.

10 CHAIR SHEEHAN: Go ahead.

11 MR. HAMILTON: But I think we're addressing the  
12 Staff Analysis here. And the Staff Analysis is saying  
13 it's a de minimis cost.

14 And apologetically, I think we have to say that we  
15 haven't brought before the Commission, up to this point  
16 in time, a quantification of what that is.

17 And my trouble with the analysis is that there is a  
18 court case, it talks about de minimis, and it is just  
19 being applied to this particular effort, dealing with the  
20 three, identified as new components, without  
21 quantification.

22 We are at fault. But I think staff needs to  
23 quantify the analysis.

24 And we'd be happy to help -- if you put this over,  
25 we will come back with information to help with the

1 quantification of it.

2 MEMBER BOEL: Can I ask a question?

3 Your position wouldn't change?

4 MR. CERVINKA: No. Our position wouldn't change.

5 In fact, I think the Commission could adopt the Staff  
6 Analysis, striking all the parts except the piece that  
7 I've just mentioned. And you would just be fine and not  
8 need to respond to the de minimis and property-tax issues  
9 that are brought here.

10 MR. HAJELA: The staff never even made that argument  
11 you just made.

12 MR. CERVINKA: Actually, my testimony quoted from  
13 the draft Staff Analysis. So I apologize for the  
14 confusion.

15 CHAIR SHEEHAN: Did you want to add anything, Paul?

16 MR. STARKEY: Just a second.

17 MS. HIGASHI: Just information. Mr. Miyashiro made  
18 some cost references for this program. And I believe  
19 that the numbers that he gave, 4.2 or 4.3 million  
20 dollars, those are numbers that can be attributed to the  
21 Controller's most recent deficiency letter, in terms of  
22 costs that have actually been claimed for this program  
23 for two prior fiscal years.

24 What we don't have is detail in terms of what  
25 percentage of those costs or what exact amount of those



1 costs claimed would be specifically attributed to the  
2 activities that are from these specific statutes that  
3 are the subject of this claim.

4 MR. MIYASHIRO: And also the Department of Finance  
5 has indicated in its response to the Staff Analysis, that  
6 it would be intending to seek legislation that would  
7 apply this to all of the SARCs. So I think it is  
8 relevant that we recognize the cost to the entire  
9 mandate.

10 And while the directive of the Legislature was to  
11 isolate it to this, the Department of Finance has  
12 indicated that it views this as almost an oversight, and  
13 that the intent of the Legislature was to encompass the  
14 entire SARC requirement.

15 MR. CERVINKA: If I may.

16 The Laird bill last year ordered reconsideration of  
17 five specific statutes. There were actually six, one  
18 being Chapter 912. And that was, in our opinion,  
19 inadvertently left off the list.

20 But, again, it's our belief that it wasn't a cost  
21 issue, de minimis consideration type of analysis here  
22 that had the Legislature ask the Commission to reconsider  
23 this decision.

24 Again, this was a voter-enacted initiative. It  
25 can't be found to be reimbursable. And that would be the

1 basis of our request to the Legislature to reconsider the  
2 sixth and final statute here.

3 CHAIR SHEEHAN: What's the will of the Commission?

4 MEMBER BOEL: I'd like to move that we accept the  
5 Staff Analysis on this.

6 MEMBER LUJANO: One more comment. I'm sorry.

7 CHAIR SHEEHAN: Can you hold on?

8 MEMBER BOEL: Okay.

9 CHAIR SHEEHAN: He's got one more comment on this.

10 MEMBER BOEL: Yes.

11 MEMBER LUJANO: Well, this item is very concerning  
12 to the Treasurer. And what I'm hearing is staff saying  
13 that Prop. 98 actually funds this program. Correct?

14 MS. TOKARSKI: The Prop. 98 funds should be able to  
15 be used to pay for the costs of providing the school  
16 accountability report card.

17 There's two elements to the *School Accountability*  
18 *Report Card*, the parts that were explicitly required by  
19 the voters. When they enacted Prop. 98, they adopted  
20 some Education Code provisions that laid out what they  
21 intended to have in the school accountability report  
22 card. And in addition, explained that there were  
23 intended to be future changes to this, if those changes  
24 were in keeping with the original *School Accountability*  
25 *Report Card* requirement.

1           So it's staff's position that the Prop. 98 funds  
2           should be used to meet any additional requirements of the  
3           *School Accountability Report Card*. And anything that was  
4           a part of the original Prop. 98 language is explicitly  
5           not mandate-reimbursable under statutory and  
6           constitutional law.

7           MEMBER LUJANO: Well, since Prop. 98 has been  
8           underfunded for over the past two years by about  
9           \$3.1 billion, the Treasurer will be voting no on this  
10          item.

11          Thank you.

12          CHAIR SHEEHAN: Did you want to make your motion?

13          MEMBER BOEL: Yes, I'd like to make a motion that we  
14          adopt the Staff Analysis.

15          CHAIR SHEEHAN: Do we have a second on the motion?

16          MEMBER SMITH: No.

17          CHAIR SHEEHAN: I'll give a courtesy second.

18          So why don't we go ahead and take the roll?

19          MS. HIGASHI: Ms. Boel?

20          MEMBER BOEL: Aye.

21          MS. HIGASHI: Mr. Lujano?

22          MEMBER LUJANO: No.

23          MS. HIGASHI: Mr. Smith?

24          MEMBER SMITH: No.

25          MS. HIGASHI: Ms. Sheehan?

1 CHAIR SHEEHAN: Aye.

2 MS. HIGASHI: We have a tie vote. So staff will  
3 keep the matter until we have more members appointed.  
4 And at that time, we can update the analysis to reflect  
5 the testimony here.

6 MR. STARKEY: Could we have just a second?

7 CHAIR SHEEHAN: Yes.

8 All right, we'll recess until -- what time?

9 MS. HIGASHI: 1:30.

10 CHAIR SHEEHAN: 1:30? Okay.

11 So we'll be back here at 1:30 for Butte County.

12 *(Midday recess taken at 12:58 p.m.)*

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the testimony of said witnesses was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on June 1st, 2005.



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Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomat Reporter  
Certified Realtime Reporter

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